

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOJO DEOGRACIAS EJONGA,

Plaintiff,

v.

CHERYL STRANGE; MICHAEL  
OBENLAND; ERIC JACKSON; JOHN  
DOE; CAROL SMITH; JANE DOE;  
JACK WARNER; LEE STEMLER; ALEX  
WANTANBE; ARBEN KULLOJKA; JON  
DOE,

Defendants.

CASE NO. 2:21-cv-01004-RJB-JRC

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND RE-  
REFERRING CASE

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura (Dkt. 101) and the Plaintiff's motion for an extension of time to file a response to the Defendants' objections (Dkt. 104). The Court has considered the Report and Recommendation, objections to the Report and Recommendation, the pleadings filed regarding the motion, and the file herein.

On August 30, 2022, the Report and Recommendation was filed, recommending that Defendants Jackson, Obenland, Strange and Warner's motion to dismiss Plaintiff's Eighth

1 Amendment claim be denied and that the motion to drop Defendants Smith, Warner, Stemler,  
2 Wantanbe and Kullojka as misjoined be denied. Dkt. 101. The Defendants filed objections to  
3 the Report and Recommendation. Dkt. 104. The Plaintiff filed a motion for a six-day extension  
4 of time to file a response to the Defendants' objections (Dkt. 104) and then filed the response  
5 (Dkt. 107).

6 **Motion for Extension of Time.** Pursuant to Fed. R. Civ. P. 16, the Court may grant an  
7 extension of time for good cause. The Plaintiff's motion for a six-day extension of time (Dkt.  
8 104) should be granted. He has stated sufficient good cause. His response to the Defendants'  
9 objections (Dkt. 107) should be considered.

10 **Report and Recommendation and Defendants' Objections.** The Report and  
11 Recommendation should be adopted and the Defendants' motions (Dkts. 67 and 69) should be  
12 denied. The Defendants maintain in their objections that the Plaintiff's Eighth Amendment  
13 claim should be dismissed because he has failed to state a claim and because they are entitled to  
14 qualified immunity. Dkt. 103. As stated in the Report and Recommendation, the Plaintiff has  
15 plausibly stated a claim for violation of his Eighth Amendment rights and, at this point in the  
16 litigation, the Defendants are not entitled to qualified immunity (which can be raised, if  
17 appropriate, by a motion for summary judgment).

18 The Defendants further object to the Report and Recommendation's recommendation that  
19 the newly joined parties remain in the case. Dkt. 103. They contend it is a "violation of the  
20 separation of powers" - between the Congressionally set fee requirements in the Prison Litigation  
21 Reform Act ("PLRA") and this Court - to allow the Plaintiff to amend his complaint and add  
22 these new parties and claims. *Id.* They also argue that it is a violation of Fed. R. Civ. P. 20,  
23 "Permissive Joinder of Parties," to allow these new parties to remain in the case. *Id.* As stated in  
24

1 the Report and Recommendation, the Defendants read the PLRA and Rule 20 too narrowly.  
2 Construing the complaint liberally, the claims are plausibly related and all deal with the  
3 Defendants' responses to COVID-19 and their treatment of the Plaintiff. The Report and  
4 Recommendation should be adopted and the newly added parties and claims should not be  
5 dropped.

6 **Re-referring Case.** This case and all pending motions should be re-referred to Judge  
7 Creatura for further proceedings.

8 **ORDER**

9 Therefore, it is hereby **ORDERED** that:

- 10 • The Plaintiff's motion for a six-day extension of time (Dkt. 104) **IS GRANTED**;
- 11 • The Report and Recommendation (Dkt. 101) **IS ADOPTED**;
- 12 ○ The Defendants' motions (Dkts. 67 and 69) **ARE DENIED**; and
- 13 • The case and all pending motions **ARE RE-REFERRED** to Judge Creatura for  
14 further proceedings.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing *pro se* at said party's last known address.

17 Dated this 19<sup>th</sup> day of October, 2022.

18 

19 ROBERT J. BRYAN  
20 United States District Judge